

INTRODUCTION TO RESEARCH IN THE LAWS OF CHINA AND TAIWAN

CHINA

Background

In 1949, when the Communist Party of China (CPC) forced the Nationalist government off the mainland and founded the People's Republic of China (PRC), all previously existing laws were repealed. They remained in effect only under the continued nationalist regime on Taiwan (Republic of China). On the mainland, under the PRC, the first few steps were taken toward establishing a new legal system, including adopting a constitution in 1954. The various political campaigns of the 1950s and 1960s, including the Anti-Rightist campaign, the Great Leap Forward, and the Cultural Revolution, periodically interrupted the development of the legal system, but after Deng Xiaoping initiated the policy of opening up the PRC to the world for trade and investment in the late 1970s, attention was again paid to developing the legal structure. Basic codes were enacted and business laws were adopted to accommodate foreign investors and trade relationships. In the last two decades, China has progressed toward regularizing its legal life. The Constitution is the highest, most fundamental legal instrument, followed by laws adopted by the National People's Congress and its Standing Committee, regulations of the State Council, and statutes from other administrative bodies.

I. Constitution

In December 1982, the National People's Congress (NPC) approved the current constitution; it was the fifth major constitutional document to be adopted since the founding of the PRC in 1949. Previously, China had been governed under the Common Program of 1949, and the Constitutions of 1954, 1975, and 1978.¹ A draft Constitution prepared in 1970, which was reprinted by the Nationalists in Taiwan but not acknowledged on the mainland until years later, was never put into effect.² Among these Constitutions, the 1954 document was the most similar to the current one in overall structure and in its provisions on the rights of citizens. The 1975 Constitution, like the 1970 draft, was a document of the Cultural Revolution, embodying such concepts as continuous revolution and emphasizing the dominant role of the CPC. The 1978 text did not repudiate the doctrines of the Cultural Revolution, and while it was longer and more complete than the 1975 version, it did not go far enough to satisfy Deng Xiaoping and the move to strengthen the legal system. The 1982 Constitution declares itself, in the Preamble, to be "the fundamental law of the state" with supreme authority.

Although the Constitution provides for a limited degree of autonomy for some major non-Han Chinese ethnic groups living in concentration in autonomous regions, it establishes essentially a unitary, rather than a federated, state. The principal central organs include the NPC, the State Council headed by

¹ English texts of the Common Program and the 1954 constitution can be found in *FUNDAMENTAL LEGAL DOCUMENTS OF COMMUNIST CHINA* 34-53, 1-33 (South Hackensack, N.J., Fred B. Rothman 7 Co., 1962). The 1975, 1978, and 1982 Constitutions were published as monographs in English translation by the Foreign Languages Press of Beijing.

² Reprinted in Lindsay, ed., *THE NEW CONSTITUTION OF COMMUNIST CHINA: COMPARATIVE ANALYSES* 312-320 (Taipei, Institute of International Relations, 1976).

the Premier, and the Supreme People's Court. The President and Vice-President are elected by the NPC, which also approves the President's choice for Premier and selects the President of the Supreme People's Court. The CPC has a constitutionally-determined role: "Under the leadership of the CPC and the guidance of Marxism- Leninism-Mao Zedong Thought, Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship..."³

The current Constitution may be amended by the NPC. Amendments must be proposed by the Standing Committee of the NPC or by a group of more than one-fifth of the NPC deputies. They are adopted after approval by more than two-thirds of the deputies.⁴ Since 1982, the Constitution has been amended three times, in 1988, to permit the sale of land use rights and to "protect the lawful rights and interests of the private sector economy," in 1993, again to facilitate economic reform, and in 1999. In the most recent revision, the goal of developing "a socialist market economy" was added to the Preamble and language about the importance of the non-public sector and diverse forms of ownership were put in the articles in the body of the document. A paragraph was added on governing according to law and building a socialist country "based on the rule of law," and language related to the rural economy was changed to include a "two-tier operations system that combines unified operations with independent operations..." In addition, the statement on suppression of "counterrevolutionary activities" to was rewritten to be "criminal activities that endanger national security."

There has been some discussion among jurists in China as to the exact nature of the constitution as a legal instrument, and, by extension, the nature of an unconstitutional act. Some view the document as essentially an outline of or guidelines for the state, combined with protection for citizen's rights. In this interpretation, only state organs or officials could commit unconstitutional acts, not ordinary citizens. Others view the constitution as the nation's basic law, applying more broadly to society, and therefore argue that any act committed by a group, or even an individual, that does not conform to the constitution can be viewed as an unconstitutional act.⁵

II. International Treaties

Under the Constitution, the Standing Committee of the NPC has the power to decide on ratification or abrogation of treaties and important agreements with foreign states.⁶ After the Standing Committee decision, the President formally ratifies or abrogates treaties.⁷ On a day-to-day basis, however, the State Council conducts foreign affairs and concludes treaties.⁸

In December 1990, the Standing Committee adopted a law on treaty-making that reiterates the basic

³ Preamble, ¶7.

⁴ Art. 64.

⁵ See discussion in Dingjian Cai, *Constitutional Supervision and Interpretation in the People's Republic of China*, 9 JOURNAL OF CHINESE LAW 219-245, 224 (Fall 1995).

⁶ Art. 67, ¶14.

⁷ Art. 81.

⁸ Art. 89, ¶9.

procedures outlined in the Constitution, establishes procedures, and defines which treaties are important enough to require Standing Committee attention. These include:

- friendship and cooperation, peace, and other political treaties
- treaties and agreements on territories and delimitation of boundaries
- treaties and agreements on judicial assistance and extradition
- treaties and agreements containing stipulations different from the laws of the PRC
- treaties and agreements subject to ratification as agreed by the concluding parties
- other treaties and agreements subject to ratification⁹

III. Law

Major legislation comes from the central power organs; local legislation is permitted because of China's size and diversity, but is limited in scope. This point has recently been stressed by Chinese officials, as having a unified, knowable legal regime for trade is key to WTO participation.

Under the Constitution, the supreme power organs of the state with the authority to issue legislation are the NPC and its Standing Committee. The NPC has the right and obligation to make and revise constitutions and “basic laws” (*jiben falü*),¹⁰ that is major codes of law like the Criminal Code. The Standing Committee may enact laws other than basic laws and may revise basic laws when the NPC is not in session, so long as these revisions are not in conflict with the underlying spirit of the original law. The Standing Committee also interprets the Constitution and the laws enacted by the NPC. The reason the Standing Committee is given legislative authority is that the NPC meets infrequently and is unwieldy in size, with nearly 3,000 members. The several hundred-person Standing Committee can more easily function as a legislature.¹¹

For those laws considered by the entire NPC, bills may be submitted in several ways. The Presidium (a body of about 200 members elected by the delegates), the Standing Committee, and other NPC Committees all have the right to submit bills. The other committees, include Nationalities; Law; Finance and Economy; Education, Science, Culture and Public Health; Foreign Affairs; and Overseas Chinese; they meet to examine and draft bills and resolutions. In addition, when the NPC is in session, any group of 30 or more deputies or any delegation from an electoral unit may introduce a bill. However, according to Zhang Xin, former law professor from Beijing University, bills submitted by such groups are added to the agenda only at the discretion of the Presidium.¹² The State Council may submit draft bills, as may the Supreme People's Court, the Supreme People's Procuracy, and the Central Military

⁹ Law of the People's Republic of China on the Procedure for Concluding Treaties, Dec. 28, 1990, art. 7. 1990:30 ZHONGHUA RENMIN GONGHEGUO GUOWUYUAN GONGBAO [Gazette of the State Council of the People's Republic of China or SCG] 1126-1120 (1990). English translation available in Foreign Broadcast Information Services, DAILY REPORT: CHINA, [FBIS] Jan. 3, 1991, at 17-20.

¹⁰ Note that *pinyin* romanization, developed in the PRC, is used throughout this report.

¹¹ See Sun Bingzhu, *The Legislative Power of the Standing Committee of the NPC*, XIANFA LUNWEN JI: XUBIAN [Collected Essays on the Constitution: Second Part] 257-259 (Beijing, The Masses Press, 1982).

¹² *How New Laws Come Into Effect*, SOUTH CHINA MORNING POST (Hong Kong), Mar. 14, 1986, at 2.

Commission; their bills must eventually appear on the agenda. Once submitted, any bill may be sent by the Presidium to committee for consideration or may be sent directly to the various delegations, before the full session votes on it.¹³

When bills go through the Standing Committee, the actual work of examining texts is done by the Legal System Work Commission (*fazhi gongzuo weiyuanhui*). This Commission, which consists of some Standing Committee members as well as legal scholars from outside the Standing Committee, will research the subject, review the proposed bill, and suggest any needed changes. The Commission is to be distinguished from the Law Committee (*falü weiyuanhui*) under the NPC itself, which consists only of delegates and is parallel to other NPC committees. Their functions are somewhat different as well; the Law Committee makes policy, but the Legal System Work Commission does the actual groundwork or research for new legislation.¹⁴

The legislation enacted by the NPC generally has the term “law” (*fa*) as part of the title. The Standing Committee can also enact documents titled “law,” as well as regulations (*tiaoli*). *Tiaoli* enacted by the Standing Committee generally have the same format as *fa* and the same validity. In addition to *fa* and *tiaoli*, the NPC and the Standing Committee may also issue documents in another category, resolutions (*jueyi*). Some of these contain legal norms and thus may be considered a part of the law-making process. They include amendments or supplements to laws, which become integral parts of the existing laws. There are also resolutions to promulgate basic laws; these contain the date of adoption and the effective date. Other NPC or Standing Committee resolutions include notifications about the organization of a special event like a conference and lists of appointments.

IV. Administrative Regulations

A. Central Regulations

In addition to the laws enacted by the NPC and Standing Committee, the State Council can adopt administrative regulations (*xingzheng fagui*). While some of these may be called *tiaoli*, others have the title measure (*banfa*), rule (*guize*), provision (*guiding*), or detailed rules for implementation (*shixing xize*). Detailed rules for implementation are usually issued together with or after the promulgation of a more general law. All of these documents are similar in structure to the laws enacted by the NPC or its Standing Committee, and there may be confusion because the Standing Committee also issues regulations (*tiaoli*). Liu Han, a prominent Chinese jurist, suggested as long ago as 1983 that the Standing Committee use only *fa* in titles of laws, so that *tiaoli* could be reserved for administrative regulations.¹⁵

The administrative organs of the state generate a great number of other documents. The titles for these are governed by the Provisional Measures on Handling Official documents of the State Administrative

¹³ Organic Law of the National People’s Congress, Dec. 10, 1982, arts. 9 and 10. 1982:20 SCG 940-947 (1982). English translation in 1 THE LAWS OF THE PEOPLE’S REPUBLIC OF CHINA 334-342 (Beijing, Foreign Languages Press, 1987).

¹⁴ This explanation of the difference between the two bodies was proposed by Xie Huaishi, an associate researcher at the Institute of Law of the Chinese Academy of Social Sciences, quoted in an article on legislative work in GUANGJIAO JING [Wide Angle], Oct. 16, 1985, at 91-93.

¹⁵ Normalization of the Legal System and the Names of Laws and Regulations, 1983:6 FAXUE [Jurisprudence] 5-12, 5 (June 10, 1983).

Organs.¹⁶ While the State Council frequently enacts the regulations on its own, in some cases the approval of the NPC or its Standing Committee has been given. For example, when the 1957 Decision on Rehabilitation Through Labor was supplemented in 1979, the Standing Committee approved the supplement.¹⁷

B. Local Regulations

There are two types of locally enacted regulations, created at the province, city, or township level: those enacted by local people's congresses (*difang xingzheng fagui*) and those adopted by local people's governments (*difang xingzheng guizhang*). These regulations tend to fall into three categories. The first is those regulations needed to implement the laws of the central government that must fit local conditions. The Electoral Law for the NPC and for Local People's Congresses at All Levels, for instance, specifies in article 53 that provincial people's congresses and their equivalents in directly-administered cities and in the autonomous regions "shall draw up detailed rules and regulations on elections for implementation in accordance with this law, and report the rules and regulations to the NPC Standing Committee for the record."¹⁸ The second category of locally enacted regulations is regulations of a supplementary nature. Provincial regulations on family planning are an example, as the national Marriage Law calls for family planning in a general way, but has no detailed provisions on the subject.¹⁹ The third type of local regulation deals with strictly local issues. Heilongjiang Province's regulation on the control of seeds for local crops, for example, addresses an issue not covered in any national legislation. All local laws must in theory be consistent with relevant provisions of national law and policy.²⁰ The Legal System Work Commission of the Standing Committee of the NPC reviews such locally enacted regulations for constitutionality; the State Council checks those regulations to make sure they are not in conflict with any administrative regulations.²¹

In 1993, the State Council issued its Decision on Improving Legal Work.²² It discusses such issues as the need for review of administrative regulations issued in the past, so that those that are not current can be revised or abolished. It stresses the need for good economic legislation as "the main point of the government's legislative work" (art. 3).

¹⁶ Adopted by the State Council on Feb. 21, 1981. 1981:5 SCG 152-158 (May 15, 1981). English summary in CHINA OFFICIAL ANNUAL REPORT 1982/3 276-277 (Hong Kong, 1982).

¹⁷ Guo Zizhao, *Enactment of Laws*, ZHONGGUO DA BAIKE QUANSHU: FAXUE [China Encyclopedia: Jurisprudence] 88-89 (Beijing, 1984).

¹⁸ Adopted July 1, 1979, amended Dec. 10, 1982, Dec. 2, 1986, and Feb. 28, 1995. English translation in FBIS, Apr. 3, 1995, at 17-23.

¹⁹ See for example "Jiangxi Regulations Governing Family Planning," June 30, 1995, translated in FBIS, Sept. 21, 1995. Article 1 states that the regulations have been drawn up in accordance with the Constitution, the Marriage Law, and the Mother and Infant Health Care Law.

²⁰ Cui Liwen, *Categories of Local Legislation*, 1985:3 ZHENGZHI YU FALÜ [Politics and Law] 31-33 (June 5, 1985).

²¹ *Supra* note 13.

²² Oct. 9, 1993. 1993:23 SCG 1079-1083 (Nov. 17, 1993). English translation in FBIS, Dec. 3, 1993, at 20-21.

V. Court System

China's courts are arranged in a hierarchy of four levels, local, intermediate, and higher people's courts and the Supreme People's Court. The system is based on two instances of trial. This means that once a trial of first instance occurs at whatever level in the system, parties may appeal only once to a higher level. The except is that for cases initially tried by the Supreme People's Court, the first level judgment is final. There are also special courts, including those for the military and for maritime matters. The Supreme People's Court publishes a gazette, which includes major decisions and interpretations issued by the Court.

VI. Legal Reform and the WTO

Since 1999, when negotiations with the United States on WTO entry concluded, the central government of the People's Republic of China has revised or formulated 14 laws, including ones on equity joint ventures, contractual joint ventures, wholly-foreign invested enterprises, patent, copyright, trademark, and customs.²³ The State Council has also revised or formulated 37 implementing regulations for these laws and repealed 12 administrative regulations. In addition, implementation was terminated for 34 regulatory documents. China's domestic trade regime has also been adjusted. The Supreme People's Court has issued 20 interpretations relevant to WTO requirements. In addition to actions at the central level, following a September 2001 circular asking localities to sort through their regulations, the provinces, autonomous regions, and large cities have revised or rescinded 4,490 local government rules and 1,130 regulations adopted by local legislatures.

Changes have been made in several substantive areas of law, but there are some general goals to the reforms: making Chinese trade law more uniform, providing transparency, and improving judicial review of administrative decisions. The Accession protocol specifies that WTO rules are to be implemented consistently, throughout the large territory of China. There has therefore been stress placed on the importance of the review of local legislation by the State Council.

China has faced criticism in the past from a lack of transparency in official dealings with foreign businesses; the accusation has been that when business applications of various types were refused, no legal basis was cited. In some cases, foreigners were told the provisions in questions were "internal" in nature, i.e., not to be publicly released. Thus, the issue of transparency became a key topic in WTO accession discussions. Chinese officials have stated that they consider better transparency in law a necessity for domestic legal development and the encouragement of the democratic process, as well as an important aspect of fulfilling WTO promises.²⁴ Four principle commitment have been undertaken:

- to enforce only published laws and establish an official journal for trade laws
- to provide a reasonable period for comments between publication and implementation of new regulations, probably 30 days for administrative regulations and rules, and, in some cases, to publish draft laws for discussion

²³ Information in this section is from a seminar including presentations by representatives of the People's Republic of China (PRC), jointly sponsored by the United States Department of Commerce and the PRC Ministry of Foreign Trade and Economic Cooperation (MOFTEC), held in the Department of Commerce building, Washington, DC, Dec. 6, 2002.

²⁴ Li Yuede, Director General, State Council Legislative Affairs Office, General Affairs Division, speaking on Dec. 6, 2002.

- to establish an inquiry point so that questions about Chinese regulations related to foreign trade and investment will be centrally and efficiently answered
- to make English versions of relevant legislation available within days of enforcement (to be published by the Legislative Affairs Commission of the Standing Committee of the NPC for laws and by the Legislative Affairs Office of the State Council for administrative regulations)

Judicial review of administrative decisions is an important aspect of WTO implementation. China has undertaken to establish tribunals, contact points, and procedures for review of how laws and regulations are used in practice. Tribunals are to be independent of the Chinese government agencies involved and impartial. In addition, the opportunity to appeal administrative actions without penalty is to be provided. There is a new Regulation on Several Issues Concerning the Trial of Administrative Cases in Relation to International Trade.²⁵

In addition, on March 10, 2003, the NPC approved a government restructuring plan which creates a new Ministry of Commerce, mandated to exercise the functions of the former State Economic and Trade Commission and MOFTEC. This move, together with other steps to reorganize central government bodies, is part of a streamlining effort.

The substantive law changes affect all aspects of intellectual property law and foreign investment regimes. All are designed to make the legal regimes compatible with the WTO. The following summaries describe only some of the major changes made.

A. Trademark Law

The Trademark Law was first enacted in 1982, amended in 1993, and further amended October 27, 2001, with the effective date being December 1, 2001. Revised Implementation Rules were issued on August 11, 2002, and became effective September 15. Reforms include increasing punishment for infringement (confiscation of infringing goods and the tools for creating them, plus higher fines) and increasing compensation to those whose rights were infringed (including compensation for costs of pursuing infringers). Other changes in the administration of trademark registration are designed to make it a better process. Among these are regulations on trademark agencies. Originally only 26 of the 150 trademark agencies were authorized to handle foreign trademark matters; that changed in the year 2000, so that all agents may handle foreign accounts.

B. Copyright Law

The Copyright Law was first enacted in 1990 and amended in October 2001. Implementation Rules of 1991 were amended August 2002. Regulations to Protect Computer Software were enacted in 1991 and amended in December 2001, effective January 2002. There are also separate regulations on copyright collective societies for music, broadcasting, and theater (like U.S. ASCAP), regulations on the protection of folklore, and regulation on the protection of Internet communication. The amendments were designed to bring the law more in line with international standards such the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual

²⁵ Adopted Aug. 22, 2002, effective Oct. 1, 2002. Text in Chinese available in 2002:5 ZHONGHUA RENMIN GONGHEGUO ZUIGAO RENMIN FAYUAN GONGBAO [Gazette of the Supreme People's Court of the People's Republic of China] 165-166 (2002).

Property Rights (TRIPS). The definition of copyright was broadened to cover all types of rights outlined in the Berne Convention. In addition, remedies have been broadened to include the right to apply for preliminary injunctions. The types of works eligible now include all natural and social science, literary, artistic, and engineering works. Software is now directly covered by copyright protection for a period of 50 years, and the revised regulations on software are consistent with this extended protection.

C. Patent Law

The Patent Law was first enacted in 1984, effective from April 1, 1985, and revised in 1992, effective January 1, 1993, with a second revision in August 2000, effective August 1, 2001. Implementing rules were enacted in 1985 and revised December 1992, with a second revision in June 2001. In the Law itself, four articles were added, four deleted, and two revised. The revision focused on promoting innovation in science and technology, strengthening protection by improving judicial and administrative enforcement, simplifying registration procedures, and opening up access to comply with WTO. There is a new provision on how damages caused by infringement are to be calculated (now based on actual losses).

D. Foreign Investment

All the major legislation covering various forms of foreign investment have undergone revision in recent years. The law covering contractual joint ventures was revised in October 2000, that on wholly-foreign owned enterprises was amended in the same month (and its implementing rules were reissued in April 2001), and the equity joint venture law was revised in March 2001 (implementing rules done in July 2001). The changes include relaxed requirements on foreign exchange balances, elimination of clauses previously requiring local content of raw materials, and modifications on export requirements. There is no longer a need to either use high-tech methods or export most of what a foreign-invested enterprise produces.

VII. Hong Kong

In 1997, Hong Kong reverted to Chinese sovereignty on the basis of the Sino-British Joint Declaration on the Question of Hong Kong (the Joint Declaration) of 1984. The Joint Declaration established that China would administer Hong Kong under the principle of “One Country, Two Systems;” thus Hong Kong’s economic and social system are to be essentially retained for 50 years. In 1990, China’s NPC adopted a Basic Law of the Hong Kong Special Administrative Region, which came into effect at the time of the reversion on July 1, 1997. This law specifies in article 8 that the laws previously in force in Hong Kong, including the common law, rules of equity, ordinances, subordinate legislation, and customary law will remain in force, with a few exceptions.

VIII. Sources

The major official gazette publishing Chinese legislation is the *Zhonghua Renmin Gongheguo Guowuyuan Gongbao*, the Gazette of the State Council of the People’s Republic of China, which includes laws enacted by the NPC as well as administrative regulations. It is in Chinese, with both English and Chinese tables of contents for each issue and a bilingual annual index. There is also an annual publication entitled *Zhongguo falü nianjian* (Yearbook of Chinese Law), also entirely in Chinese except for an English table of contents, that contains discussions of legal developments as well as texts of laws and regulations.

A second major gazette is the *Zhonghua Renmin Gongheguo Renmin Daibiao Dahui Changwu Weiyuan hui Gongbao*, the Gazette of the Standing Committee of the National People's Congress of the People's Republic of China]. Like the State Council Gazette, it is in Chinese, with both English and Chinese tables of contents in each issue. It contains all the enactments of the Standing Committee, overlapping with the State Council Gazette, but also includes numerous reports issued to accompany legislation.

The Supreme People's Court and the Supreme People's Procuratorate also have gazettes in Chinese with English tables of contents.

In addition, there are a great number of compilations of laws, in English and Chinese, both from the official press and from private publishers, largely outside of China. Those issued by the government are required to comply with the Regulations for Administering the Compilation and Publishing of Collections of Laws and Regulations.²⁶ Examples of government press publications include:

- *The Laws of the People's Republic of China*. Volumes issued by Legislative Affairs Commission of the Standing Committee of the NPC and published by various presses over the years.
- *Laws and Regulations of the People's Republic of China*. Loose-leaf format, issued in 2001 by the Legislative Affairs Office of the State Council and printed by the Chian Legal Publishing House
- *Zhonghua Renmin Gongheguo Falü Fenlei Zonglan*. (Classified Assemblage of the Law of the PRC), produced by the NPC Standing Committee Legal System Work Commission, 1994.
- *Zhonghua Renmin Gongheguo Falü Fagui Quanshu*. (Complete Book of the Laws and Regulations of the PRC), also produced by the Legal System Work Commission in 1994.

Private publishers have focused on commercial and trade laws (such as the loose-leaf “China Laws for Foreign Business,” put out by CCH Australia, Inc.).

Volumes have been issued in Chinese that compile laws on individual subjects, and there is a two volume set of local legislation (*Zhonghua Renmin Gongheguo Difangxing Fagui Huibian*– Compilation of Local Regulations of the People's Republic of China, published in 1995 by the China Law Yearbook Company in Beijing). In addition, several multinational legal compilations cover China (including *Constitutions of the Countries of the World*, published by Oceana Publications; *Digest of Commercial Laws of the World*, also by Oceana; *International Encyclopedia for Labour Law and Industrial Relations*, by Kluwer Law and Taxation Publishers).

The documents on China's joining the World Trade Organization and information on legal reform associated with that process can be found in:

- *Accession of the People's Republic of China to the World Trade Organization, Baseline of Commitments, Initial Implementation and Implications for U.S.-PRC Trade Relations and U.S. Security Interests*. Ardsley, NY, Transnational Publishers, 2002.
- *Compilation of the Legal Instruments on China's Accession to the World Trade Organization*. Published in Beijing in 2002 in two volumes; volume one has English texts described as “certified

²⁶ July 29, 1990. 1990:16 SCG 579-582 (1990). English translation in FBIS, Aug. 14, 1990, at 26-28.

true” copies (China Economic Press).

A good source of both legal news and texts for those who read Chinese is the legal newspapers that are published in each province and major city (e.g. *Shanghai Fazhibao*, *Liaoning Fazhibao*). Other news sources, such as Xinhua’s English and Chinese broadcasts, often carry the texts of new laws and regulations. A convenient way to follow these is through the Foreign Broadcast Information Service’s *Daily Report: China*. As of July 1996, paper publication was discontinued; access now is through established accounts to an online service called World News Connection (*see* <http://wnc.fedworld.gov>). LEXIS/NEXIS, a commercial online service, has a file containing texts of some Chinese laws, as well as Xinhua’s English releases.

The Chinese government now has a number of sites on the Internet that contain legal information, including but not limited to:

- <http://english.moftec.gov.cn/> This is the English version of the website of the Ministry of Foreign Trade and Economic Cooperation. It has a range of information of use to those interested in trade with China, including a section labeled “Law Digest” that contains texts of trade-related legislation in English. The site may change however, as MOFTEC itself is being eliminated and its functions taken on by the Ministry of Commerce.
- <http://en.chinacourt.org/> The Supreme People’s Court has a website with an English version that contains links to texts of major laws that define the legal system, recent laws in all fields, and news items, plus information on the judges of that Court.
- http://law.zhb.gov.cn/index_eng_navigate.php This is the website of the State Environmental Protection Administration. The English version of the website contains translations of laws and regulations on the environment.
- <http://www.acftu.org.cn/legislat.htm> This is the website of the All China Federation of Trade Unions, which includes some legislation.
- <http://www.china.org.cn> This is an official information site, with general news and information on China as well as links to some legal information. It is one way to get the site of the State Council Gazette online (which has only a few issues from 1999 and 2000.)

Sources for Hong Kong:

- http://www.info.gov.hk/basic_law/flash.html This is a special website devoted to the Basic Law, containing a full text in English.
- <http://www.justice.gov.hk/index.htm> Hong Kong ordinances can be found conveniently online in this Bilingual Laws Information System.

There are also other Chinese law resources available through the internet; however sites vary in completeness and currency. One of the web sites with full texts of laws is China Today: <http://www.chinatoday.com/law/a.htm>. Another is http://www.novexcn.com/about_us.html which contains some laws arranged by topic, but is inconsistent as to contents: for example, their Intellectual Property section has the patent law, but no copyright law. This site also has material on Vietnam and North Korea, including some law titles and some full texts in English.

TAIWAN

Background

When the Chinese Communists established control of most of the mainland of China in 1949, the Nationalist regime moved to the island of Taiwan. Since that time, the government there has controlled only Taiwan and a few small nearby islands; it considers itself to be the Republic of China. Taiwan has a civil law system, emphasizing the statutory legal structure, rather than a relying on case law. The government is composed of five branches, called *yuan*s: the Executive, Legislative, Judicial, Examination, and Control *Yuan*. The Judicial *Yuan* is the highest judicial organization of the state, with the Council of Grand Justices as its highest body. The Council interprets the Constitution and unifies the interpretation of laws and ordinances. The Examination *Yuan* is responsible for all civil service exams. The Control *Yuan* is the highest control organization of the state, exercising the powers of impeachment, censure, and audit. The Control *Yuan* was formerly a parliamentary body, with its members elected by provincial and municipal councils. However, constitutional amendments in May 1992 transformed it into a quasi-judicial organization. From July 1997 onwards, it no longer had the power to institute impeachment against the president and vice president of the Republic; the Legislative *Yuan* was empowered by constitutional amendment to take over that duty.

In principle, the Executive, Judicial, Examination, and Control *Yuan* are authorized to propose legislative bills to the Legislative *Yuan*. The legislative bills proposed by the Legislative *Yuan*, on the other hand, must be cosigned by a certain number of legislators.

The Constitution is ranked above codes, statutes, and ordinances. According to article 170 of the Constitution, the term “law” as used in the Constitution means any legislative bill duly passed by the Legislative *Yuan* and promulgated by the President. In addition to the five *Yuan* and their subordinate Ministries, lower administrative agencies have the power to issue ordinances. However, ordinances not consistent with the Constitution and laws will not have any legal effect.

I. Constitution

The Constitution, adopted 1946, effective from December 25, 1947, contained 175 articles in the original text. Since the date of first promulgation, it has been amended five times. The 11 articles of the five amendments have been consolidated into a single text, maintained as a separate part of the Constitution. The amendment has governing force in place of any specifically repealed provisions in the original Constitution. Paragraph 2, article 79 of the Constitution authorizes the Council of Grand Justices to interpret the Constitution; those interpretations of the Constitution therefore have the same binding force as the Constitution itself.²⁷

II. International Treaties

Neither the legal effect of treaties and agreements nor their place in the hierarchy has been

²⁷ English text widely available. See for example <http://www.taiwandocuments.org/constitution01.htm>

specified under the Constitution or in any law. However, the Supreme Court held²⁸ that the legal effect of treaties and agreements is superior to that of national laws. Since most treaties and agreements are self-executing in Taiwan, they enter into force right after the treaty bills are reviewed and adopted by the Legislative *Yuan* and then ratified and promulgated by the President. It is not necessary to establish another implementing law.

III. Emergency Orders

Under of the amendatory Additional Articles of the Constitution,²⁹ the President may issue emergency orders based on the decision of the Executive *Yuan*, when the country is encountering an imminent emergency situation. The procedure must be completed by the sending of an emergency order bill to the Legislative *Yuan* within 10 days for ratification. The emergency will no longer be in effect if the Legislative *Yuan* disapproves the emergency order bill. Theoretically speaking, the legal effect of an emergency order is equal to that of a law; moreover, it governs when conflicts arise.

IV. Laws

According to article 170 of the Constitution, the term “law” means any legislative bill duly passed by the Legislative *Yuan* and promulgated by the President. Furthermore, in accordance with the Law Governing Exercise of the Legislative *Yuan*’s Authority, once a bill reaches the legislature, it is subject to a process of three readings. Article 2 of the Law for Standardization of National Laws and Regulations³⁰ requires that each law include in its title the term law or act (*fa* or *lü*), statute (*tiaoli*), or organic statute (*tungze*). Laws are effective beginning on the third day after promulgation, if the law itself says that it comes into force from the promulgation day.

V. Regulations

Article 158 of the Administrative Procedure Law³¹ states that regulations that contravene the Constitution, laws, or regulations from superior agencies or that deprive or restrict people’s freedom and rights without authorization of higher laws shall be null and void. Regulations provide a specific provision indicating which is the authorizing law. Article 3 of the Standardization Law lists the nomenclature for administrative regulations (known collectively as *mingling*), which may be described as procedures (*guicheng*), rules (*guize*), specifications (*xize*), measures (*banfa*), guidelines (*gangyao*), standards (*biaozhun*) or criteria (*zhunze*).

VI. Court Decisions

Although Taiwan is a civil law jurisdiction, and as such does not adopt the general concept of binding precedent, judicial authorizations are nonetheless widely consulted. In general, court decisions

²⁸ Ruling No. 1074, 1934.

²⁹ ¶ 3, art. 2.

³⁰ Aug. 31, 1970. Text available in many compilations, including *Zuixin shiyong liufa quanshu: zenglu shiyong xingxiang guan fagui 400 zhong* 48-49 (Tainan, 2001).

³¹ Feb. 3, 1999, amended Feb. 27, 2000. *Id.* at 718-731.

bind only the case in trial. Nevertheless, court decisions become binding precedents when they are final judgments made by the Supreme Court or the Supreme Administrative Court and are selected as precedents based on decisions of the periodical symposiums of those two courts. The Supreme Court has jurisdiction over both civil and criminal cases; the Supreme Administrative Court has jurisdiction over administrative lawsuits. As for decisions made by other general courts of first and second instance (“district courts” and “high courts”) or the first instance administrative courts (“high administrative courts”), they serve merely as references.

VII. Sources

For all but the most major texts, the primary sources are available only in Chinese. The Constitution can be found in the multinational work edited by Blaustein & Flanz, *Constitutions of the Countries of the World* and online at <http://www.oefre.unibe.ch/law/icl/home.html>. Compilations in English include:

- *Major Laws of the Republic of China on Taiwan*. Taiwan: Magnificent Publishing Co., 1991 (bilingual edition).
- *A Compilation of the Laws of the Republic of China*. Taipei: David C.C. Kang, 1974.
- *Major Statutes of the Republic of China: Vol. 1: Constitutional and Administrative Statutes; Vol. 2: Civil and Criminal Statutes*. Taipei: Judicial Yuan, 1990.

Online, some statutes can be found at <http://www.qis.net/chinalaw/>, a website from the University of Maryland, but that has not been updated since 1998.

There are a number of official publications and websites, most of which are solely in Chinese:

- *Gazette of the Office of the President (Zongtongfu gongbao)*. Currently the Gazette covers only laws.
- Legislative Yuan Gazette and website (*Lifayuan gongbao*), <http://www.ly.gov.tw>. This Gazette includes minutes of discussions in committee and plenum sessions, and publication of finalized statutes. The website of the Legislative Yuan, based on the Gazette of the Office of the President, contains abundant legal information, such as current laws, comparison of current and former provisions, the legislative history, and so on. It has an English-language version.
- Executive Yuan Gazette (*Xingzhengyuan gongbao*), <http://www.gazettes.com.tw>. The Gazette is comprised of selected laws, regulations, and administrative rules related to the responsibilities of the agencies under the Executive Yuan. Most of the agencies also published their own gazettes; the Executive Yuan Gazette accordingly focuses on laws related to agencies that do not usually publish gazettes of their own.
- Ministry of Justice Gazette (*Fawubu gongbao*) and the National Legal Information Database (<http://law.moj.gov.tw/>). This Gazette is a fortnightly; coverage includes selected laws and regulations, administrative rules, etc. In addition, the related database incorporates other legal materials, such as Interpretations of the Council of Grand Justice, court decisions, treaties, and agreements, as well as Cross-Straits agreements, but is entirely in Chinese.
- Judicial Yuan Gazette (*Sifayuan gongbao*) and website <http://www.judicial.gov.tw>. This monthly gazette carries many Supreme Court decisions, Council Interpretations, High Court and District

Court Symposium Opinions, and selected High Court judgments on civil and criminal cases. An English version exists.

Recently the Republic of China government has started publishing English translations of Council of Grand Justices interpretations, under the title *Republic of China Constitutional Court (Grand Justices Council) Reporter* (Taipei, from 2000).

- <http://www.taiwandocuments.org> is a non-governmental website with treaties, U.S. law, and other materials about the status of Taiwan. It also includes the Constitution.

VIII. GLIN

Along with other online sources for information on Taiwan law, the Global Legal Information Network (GLIN) may be use to you. It is a project that began here at the Library of Congress and is now a growing international cooperative organization for the sharing of legal information. Our partners in Taiwan's Legislative Yuan input the texts of all new laws into the database, together with full citation and indexing information and with an English language summary.

To log on, go to <http://www.loc.gov/law/glin> and click on "guest." Subject searches can be done using an English-language thesaurus especially developed for GLIN. Note that South Korea is also a participating member. While the full texts are not available to the public and in any case are not translated, GLIN can be a useful tool in determining if there have been new legal developments in a particular area of the law. The citation to the original source is given.

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